NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Washington Sprinkler Company, Inc. f/k/a Washington Sprinkler, Inc. and Road Sprinkler Fitters Local Union 669, UA, AFL-CIO. Cases 5-CA-31925 and 5-CA-32016

March 31, 2008

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the amended compliance specification.

On September 21, 2005, the Board issued a Supplemental Decision and Order¹ that, among other things, ordered the Respondent, Washington Sprinkler Company, Inc., formerly known as Washington Sprinkler, Inc., to make unit employees whole for lost earnings and benefits resulting from the Respondent's unfair labor practices in violation of Section 8(a)(5) and (1) of the Act. On January 12, 2006, the United States Court of Appeals for the District of Columbia entered its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due the unit employees and contributions due the funds, on August 24, 2007, the Regional Director issued an amended compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the amended compliance specification, the Respondent has failed to file an answer.³

On February 11, 2008, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On February 13, 2008, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again failed to file a response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

Ruling on the Motion for Default Judgment⁴

Section 102.56(a) of the Board's Rules and Regulations provides that the respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the amended compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the amended compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the amounts of backpay due the unit employees are as stated in the compliance specification, and we will order the Respondent to pay those amounts, plus interest accrued to the date of pay-In addition, we conclude that the contractual fringe benefit fund payments owed by the Respondent are as stated in the compliance specification, and we will order the Respondent to pay those amounts to the funds on behalf of the unit employees.⁵

¹ 345 NLRB 912. This supplemental decision supersedes the Decision and Order reported at 344 NLRB 396 (2005), in which the Board denied default judgment with respect to the allegation that Washington Sprinkler, Inc. (the Respondent) violated Sec. 8(a)(5) "by failing to make fund payments as required by the collective-bargaining agreement." The Board stated that certain types of benefit funds are permissive subjects of bargaining for which no remedy would be warranted, and that there was no indication as to the nature of the funds involved. In her dissent, Member Liebman stated that she would have granted the General Counsel's motion in all respects.

² No. 05-1394.

³ As set forth in the General Counsel's motion, the compliance officer for Region 5 experienced repeated difficulties in serving the Respondent with the amended compliance specification and notice of hearing. After several attempts to serve the Respondent via mail, the Respondent's principal, Kendrick Evans, was personally served on October 10, 2007. Subsequently, the Regional Director issued several orders postponing the hearing and extending the date for the Respondent's answer in order to accommodate the Respondent. The compliance officer again experienced difficulties in serving the Respondent

via mail. Evans was personally served with all of the additional relevant documents on December 31, 2007.

⁴ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

⁵ The amended compliance specification alleges that the Respondent failed to provide the Union with the information it requested on February 27, 2004, and mail at its own expense a copy of the notice to all current and former employees employed by the Respondent at any time since January 19, 2004. By failing to file an answer, the Respondent has effectively admitted that it has failed to do so. Nevertheless, we find it unnecessary in this proceeding to order the Respondent to do so,

ORDER

The National Labor Relations Board orders that the Respondent, Washington Sprinkler Company, Inc. f/k/a Washington Sprinkler, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall make whole the individuals named below by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws. The Respondent also shall make whole those individuals for payments due the contractual fringe benefit funds by paying the amounts set forth. In summary, the amounts owed by the Respondent are as follows:

Backpay:

DISCRIMINATEE	QUARTER	NET
DISCRIMINATEE	QUARTER	BACKPAY
Adams, Kevin	1st 2004	\$ 1,688.40
	2 nd 2004	3,135.60
Aston, Melvin	1st 2005	2,298.40
Burnette, Glenn	1st 2004	1,856.40
	2 nd 2004	3,447.60
	1st 2005	4,596.80
Butler, Rick	1st 2005	2,475.20
Butler, Tony	2 nd 2005	4,596.80
Cyrus, Dwayne	1st 2005	2,699.20
Ferguson, Christopher	1st 2005	4,571.84
Hayes, Michael	1st 2005	2,699.20
Moore, Isom	1st 2005	4,743.60
Moore, Tony	1st 2004	1,856.40
	2 nd 2004	4,773.60
	1st 2005	2,475.20
Murphy, Willie	1st 2005	2,475.20
Price, Gregory	2 nd 2005	1,326.00
Randall, Steven	1st 2005	2,475.20
Scott, Elliott	1st 2005	4,596.80
Scott, Ysef		0
Williams, Llewellyn	3 rd 2005	1,684.80
Williams, Vernon		0
Willis, Marvin	1st 2005	4,571.84
TOTAL BACKPAY: ⁶		\$ 65,044.08

as those actions are required by our previous Order that has been enforced by the court of appeals. See *Ryder System*, 302 NLRB 608, 610 fn. 9 (1991), enfd. 983 F.2d 705 (6th Cir. 1993).

Benefit Fund Payments:

NASI Welfare Fund:	\$ 25,731.20
NASI Pension Fund:	19,574.80
NASI Industry Education Fund:	2,270.40
NASI-Local 669 Industry Education Fund:	$1,135.20^7$
NASI Supplemental Pension Fund:	7,568.00
TOTAL FRINGE BENEFIT PAYMENTS:	56,279.60
COMBINED TOTAL DUE:	\$ 121,323.68

Dated, Washington, D.C. March 31, 2008

Pete	r C. Schaumber,	Chairman
Wili	ma B. Liebman,	Member
(SEAL)	NATIONAL LABOR 1	RELATIONS BOARD

⁷ The amended compliance specification inadvertently omits the payment to the Charging Party's NASI Local 669 Education Fund and incorrectly lists the payment to the Supplemental Pension Fund as \$1,135.20. The backpay Order reflects the appropriate payment to these funds, as set forth in Exhibit C of the amended compliance specification, attached hereto as appendix A.

⁶ The amended compliance specification incorrectly lists the total backpay award as \$65,044.88. The backpay Order reflects the correct total.

APPENDIX A

EXHIBIT C

	Estimated Hourly			Hours	Estimated Calendar Quarter		Contractual Hourly Wage		Calendar Quarter Gross		Qua	
Adams, Kevin	\$ 15.00		1st 2004	worked	Earnings		Rate		Backpay Backpa			
Additio, Reviti		15.00		168		2,520.00	\$	25.05	\$	4,208.40	\$	1,688.40
Aston, Melvin	\$	14.00	2nd 2004	312		4,680.00	\$	25.05	\$	7,815.60	\$	3,135.60
Burnette, Glenn	2		1st 2005	208		2,912.00	\$	25.05	\$	5,210.40	\$	2,298.40
burnette, Glenn	\$	14.00	1st 2004	168		2,352.00	\$	25.05	\$	4,208.40	\$	1,856.40
	>	14.00	2nd 2004	312		4,368.00	\$	25.05	\$	7,815.60	\$	3,447.60
Butler Diel	\$	14.00	1st 2005	416		5,824.00	\$	25.05		10,420.80	\$	4,596.80
Butler, Rick	\$	14.00	1st 2005	224		3,136.00	\$	25.05	\$	5,611.20	\$	2,475.20
Butler, Tony	\$	14.00	2nd 2005	416		5,824.00	\$	25.05	\$	10,420.80	\$	4,596.80
Cyrus, Dwayne	\$	13.00	1st 2005	224	-	2,912.00	\$	25.05	\$	5,611.20	\$	2,699.20
Ferguson, Christopher	\$	14.06	1st 2005	416		5,848.96	\$	25.05	\$	10,420.80	\$	4,571.84
Hayes, Michael	\$	13.00	1st 2005	224	\$	2,912.00	\$	25.05	\$	5,611.20	\$	2,699.20
Moore, Isom	\$	15.00	1st 2005	472	\$	7,080.00	\$	25.05	\$	11,823.60	\$	4,743.60
Moore, Tony	\$	14.00	1st 2004	168	\$	2,352.00	\$	25.05	\$	4,208.40	Ś	1,856.40
	\$	14.00	2nd 2004	432	\$	6,048.00	\$	25.05	\$	10,821.60	\$	4,773.60
			1st 2005	224	\$	3,136.00	\$	25.05	\$	5,611.20	5	2,475.20
Murphy, Willie	\$	14.00	1st 2005	224	\$	3,136.00	\$	25.05	\$	5,611.20	Ś	2,475.20
Price, Gregory	\$	14.06	2nd 2005	120	\$	1,680.00	\$	25.05	\$	3,006.00	Ś	1,326.00
Randall, Steven	\$	14.00	1st 2005	224	\$	3,136.00	\$	25.05	Ś	5,611.20	Ś	2,475.20
Scott, Elliot	\$	14.00	1st 2005	416	\$	5,824.00	ś	25.05	Ś	10,420.80	š	4,596.80
Scott, Ysef	\$	35.00	2nd 2005	416	\$	14,560.00	\$	26.55		11,044.80	*	4,550.00
Williams, Llewellyn	\$	21.00	3rd 2005	416		8,736.00	ś	25.05		10,420.80	Ś	1,684.80
Williams, Vernon	\$	35.00	1st 2004	168		5,880.00	Ś	26.55	Š	4,460.40	7	1,004.00
	\$	35.00	2nd 2004			10,920.00	Š	26.55	š	8,283.60		
	\$	35.00	1st 2005			16,520.00	Š	26.55	,	12,531.60		
Willis, Marvin	\$	14.06	1st 2005	416		5,848.96	\$	25.05		10,420.80	\$	4,571.84
											\$	65,044.08

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	NAS	ASI Welfare		SI Welfare NASI Pension		NASI Industry Education		NASI-Local 669 Education		NASI Supplemental Pension	
Adams, Kevin	\$	571.20	\$	428.40	\$	50.40	\$	25.20	\$	168.00	
	\$	1,060.80	\$	795.60	Ś	93.60	š	46.80	Š	312.00	
Aston, Melvin	\$	707.20	\$	540.80	\$	62.40	Š	31.20	Š	208.00	
Burnette, Glenn	\$	571.20	\$	428,40	š	50.40	Š	25.20	\$	168.00	
	\$	1,060.80	\$	795.60	\$	93.60	š	46.80	Š	312.00	
	\$	1,414.40	\$	1,081.60	Š	124.80	š	62.40	Š	416.00	
Butler, Rick	\$	761.60	\$	582.40	š	67.20	Š	33.60	Š	224.00	
Butler, Tony	\$	1,414.40	\$	1,081.60	s	124.80	š	62.40	ś	416.00	
Cyrus, Dwayne	\$	761.60	\$	582.40	ś	67.20	Š	33.60	Š	224.00	
Ferguson, Christopher	\$	1,414.40	\$	1,081.60	ś	124.80	Š	62.40	Š	416.00	
Hayes, Michael	\$	761.60	\$	582.40	Ś	67.20	\$	33.60	š	224.00	
Moore, Isom	\$	1,604.80	\$	1,227.20	Š	141.60	Š	70.80	Š		
Moore, Tony	\$	571.20	\$	428.40	Ś	50.40	š	25.20	5	472.00	
	\$	1,468.80	\$	1,101.60	5	129.60	Š	64.80	Š	168.00	
	\$	761.60	\$	582.40	š	67.20	Š	33.60	Š	432.00 224.00	
Murphy, Willie	\$	761.60	\$	582.40	s	67.20	Š	33.60	Š		
Price, Gregory	\$	408.00	\$	312.00	Š	36.00	Š	18.00	Š	224.00	
Randall, Steven	\$	761.60	\$	582.40	Š	67.20	Š	33.60	ŝ	120.00	
Scott, Elliot	\$	1,414.40	\$	1,081.60	Ś	124.80	Š	62.40	2	224.00	
Scott, Ysef	\$	1,414.40	\$	1,081.60	\$	124.80	š	62.40	ŝ	416.00	
Williams, Llewellyn	\$	1,414.40	\$	1,081.60	ś	124.80	Š	62.40	2	416.00	
Williams, Vernon	\$	571.20	\$	428.40	Ś	50.40	Š	25.20	ŝ	416.00	
	\$	1,060.80	\$	795.60	Ś	93.60	Š	46.80	2	168.00	
the same of the sa	\$	1,604.80	\$	1,227.20	Ś	141.60	š	70.80	2	312.00	
Willis, Marvin	\$	1,414.40	\$	1,081.60	\$	124.80	š	62.40	ž	472.00	
	\$	25,731.20	\$	19,574.80	5	2,270.40	5	1.135.20	÷	416.00	